In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1521

ANTHONY SICILIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The issue presented is whether federal agents in the course of a routine investigation of stolen property were required to give *Miranda* warnings to petitioner before entering into conversation with him and obtaining his consent to search his business premises.

An indictment filed in the United States District Court for the Northern District of Illinois charged petitioner with possession of goods stolen from an interstate shipment, in violation of 18 U.S.C. 659. Prior to trial petitioner moved to suppress statements made by him to F.B.I. agents who did not provide him with a *Miranda* warning, and to suppress evidence concerning a stolen fork lift truck found by the agents on petitioner's business premises. After a hearing, the district judge ordered the evidence suppressed. On the

government's appeal, the court of appeals first remanded with directions to the district judge to record findings of fact and conclusions of law. *United States* v. *Sicilia*, 457 F. 2d 787 (C.A. 7) (Pet. App. 9a-10a). After the district judge recorded his findings and conclusions on April 21, 1972, (Pet. 3-4), the court of appeals reversed (Pet. App. 1a-7a).

1. The evidence showed that on February 26, 1970, a confidential informant told the F.B.I. that a Clark fork lift truck stolen more than two months before from an interstate shipment could be found on the premises of the A & S Cartage Company in Chicago, Illinois. On that day four agents proceeded to the cartage company to speak with petitioner, who they had learned was president and owner of the business. One of the four agents, Agent Meisler, knew petitioner from previous contacts on unrelated matters.

Upon arriving at petitioner's business, two of the agents, including Meisler, entered petitioner's office to talk with him while the other two waited at a dock area. Petitioner and the two agents inside engaged in a general discussion, initially recalling past meetings with Meisler. In the course of this conversation, the matter of recent purchases of fork lift trucks was raised by the agents. Petitioner told the agents that he had purchased a number of fork lift trucks, including a Clark fork lift truck, at about the time of the theft, and had paid for them by check, receiving a bill of sale. He permitted the agents to examine all of the fork lift trucks on the premises. After a short search, the agents discovered a lift truck bearing a serial number matching that of one of the stolen trucks. Petitioner was then advised of his right to silence and to counsel; he made no statements thereafter (see findings of facts reproduced at Pet. 3-4).

2. Petitioner claims that he was entitled to a *Miranda* warning before the agents initiated any conversation with him, and that without a warning the statements he made to the agents and his consent to search the trucks were unlawfully obtained. However, *Miranda* warnings are required only as part of a "custodial interrogation," which this Court has defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda* v. *Arizona*, 384 U.S. 436, 444. Nothing in the record indicates that petitioner was in custody or under any restraint at the time of his conversations with the agents. See *Posey* v. *United States*, 416 F. 2d 545, 549-550 (C.A. 5), certiorari denied, 397 U.S. 946; *United States* v. *Lacy*, 446 F. 2d 511 (C.A. 5).[1]

Similarly, a *Miranda*-type warning advising petitioner that he could refuse to consent to the search was not necessary as a condition to obtaining lawful consent from an individual who, as here, was being interviewed in a "home or office, and under informal and unstructured conditions." *Schneckloth* v. *Bustamonte*, No. 71-732, decided May 29, 1973 (slip op., pp. 14, 30-31).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1973.

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[1] The total absence of restraint and the non-accusatorial setting in which the agents conversed with petitioner distinguish this case from *Orozco* v. *Texas*, 394 U.S. 324, and *Mathis* v. *United States*, 391 U.S. 1, relied upon by petitioner (Pet. 7).